

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

EDITH PALOS, <i>Plaintiff,</i>	§ § § § § § § § § §	Civ. Action No. 4:09-cv-02798
v.		
UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON, <i>Defendant.</i>		

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**DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES**

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TO THE HONORABLE KENNETH M. HOYT, UNITED STATES DISTRICT JUDGE:

Defendant The University of Texas Health Science Center at Houston (“UTHSC-H”) files its Answer and Affirmative Defenses to Plaintiff’s Original Complaint and respectfully states as follows:

**ANSWER**

Pursuant to Federal Rule of Civil Procedure 8(b), UTHSC-H denies each and every allegation contained in Plaintiff’s Original Petition except for those expressly admitted herein. The numbered paragraphs herein correspond to the paragraphs within the body of Plaintiff’s Original Complaint. UTHSC-H responds as follows:

**A. Parties**

1. Admits that Plaintiff is an individual, and denies knowledge or information as to whether Plaintiff is a citizen of Texas.
2. Admits the averments in this paragraph.

**B. Jurisdiction**

1. Admits the averments in this paragraph.
2. Denies that Plaintiff has any retaliation or discrimination claim arising under 42 U.S.C. § 2000e, *et seq.*, or 42 U.S.C. § 12112(a).

**C. Venue**

Admits the averments in this paragraph.

**D. Exhaustion of Administrative Procedures**

Denies knowledge or information as to when Plaintiff received a notice of the right to sue from the EEOC or whether a true and correct copy of such notice is attached as Exhibit A, and otherwise admits the averments in this paragraph.

**E. Count I – Discrimination Under Title VII**

1. Denies the averments in this paragraph, except admits that Plaintiff was an employee of UTHSC-H.
2. Admits the averments in this paragraph.
3. Denies the averments in this paragraph.
4. Denies the averments in this paragraph.
5. Denies the averments in this paragraph, except admits that Plaintiff applied for and received leave under the Family Medical Leave Act.
6. Denies the averments in this paragraph.

**F. Count II – Retaliation Under Title VII**

1. Denies the averments in this paragraph.
2. Denies the averments in this paragraph.
3. Denies the averments in this paragraph.

**G. Damages**

1. Denies the averments in this paragraph.
  - a. Denies knowledge or information as to the averments in this paragraph, except admits that Plaintiff was discharged from employment with UTHSC-H.
  - b. Denies the averments in this paragraph.
  - c. Denies the averments in this paragraph.
  - d. Denies the averments in this paragraph.

**H. Attorney Fees**

Denies the averments in this paragraph.

**I. Prayer**

14. Denies that Plaintiff is entitled to any of the requested relief.

**AFFIRMATIVE DEFENSES**

1. Plaintiff has failed to state a claim upon which relief can be granted for discrimination or retaliation based on disability.
2. Sovereign immunity bars any and all of Plaintiff's claims to which that defense may apply.
3. The Eleventh Amendment bars any and all of Plaintiff's claims to which that defense may apply.
4. Any employment decisions challenged by Plaintiff were made for legitimate, non-discriminatory, non-retaliatory reasons required by business necessity, and these decisions would have been made regardless of any protected activity claimed by Plaintiff.
5. At all times relevant to this cause, UTHSC-H's actions were reasonable and

proper under the laws of the State of Texas and the United States.

6. Plaintiff failed to mitigate her damages, if any.

7. Plaintiff's own acts and/or omissions caused or contributed to the Plaintiff's injuries, if any.

8. UTHSC-H reserves the right to raise additional affirmative defenses as they become apparent during the development of the case.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendant UTHSC-H respectfully requests that the Court enter judgment for it and against Plaintiff, holding that Plaintiff take nothing by her action and award UTHSC-H such further relief to which it is entitled, including costs and attorney's fees.

Dated: January 4, 2010

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

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First Assistant Attorney General

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Deputy Attorney General for Civil  
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/s/ Darren G. Gibson  
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***ATTORNEYS FOR DEFENDANT  
UNIVERSITY OF TEXAS HEALTH  
SCIENCE CENTER AT HOUSTON***

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of Defendant's Answer and Affirmative Defenses was served via the *CM/ECF system* on January 4, 2010, to:

Larry Watts  
P.O. Box 2214  
Missouri City, Texas 77459  
*Attorney for Plaintiff*

/s/ Darren G. Gibson  
**DARREN G. GIBSON**  
Assistant Attorney General